

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, CA 94105**

RH06091489

June 7, 2006

**DRAFT REVISED REGULATION TEXT¹
Mileage Verification**

(c) An insurer's class plan, and all rates and premiums determined in accordance therewith, shall utilize the following rating factors (the "Mandatory Factors") for bodily injury liability, property damage liability, medical payments, uninsured motorist, collision, and comprehensive coverages:

(1)

(2) "Second Mandatory Factor" as used in Subchapter 4.7, is the number of miles he or she drives annually, per California Insurance Code Section 1861.02(a)(2). This factor means the estimated annual mileage for the insured vehicle during the 12 month period following the inception of the policy. Insurers may not retroactively adjust premiums based on actual miles driven unless notice is provided to the policy holder prior to the effective date of the policy. Estimated annual mileage shall be determined only as follows:

(A) For new business:

(i) During the application process, an insurer shall require an applicant to provide the miles he or she expects to drive the insured vehicle during the 12 month period following policy inception, and reasonable information necessary to support the estimate. "Reasonable information" consists of the location of the applicant's workplace if the vehicle is used for commute purposes, the number of days per week the vehicle is used for commuting, an estimate of the number of miles to be driven for pleasure or other purposes, the approximate total number of miles driven the previous two years, the reason for any differences in the estimate for the upcoming year and the miles driven the previous year, and the approximate date of purchase of the vehicle. An insurer need not require all categories of information. Except as otherwise set forth in this section, an insurer shall use the applicant's estimated annual mileage;

(ii) An insurer may require all applicants to provide the current odometer reading of the vehicle to be insured or the insurer may obtain the odometer reading from the California Department of Motor Vehicles smog certification program;

¹ Changes from the existing regulation text are indicated in underline.

(iii) If an insurer markets using an independent or captive agency system, and an applicant meets with an agent in connection with the insurance application, the insurer may require the agent to verify the odometer reading of the vehicle to be insured under the policy, and the applicant shall allow the agent to do so in order to obtain the coverage;

(iv) An insurer may request but shall not require service records which document the odometer reading at a particular date within the last three months;

(v) If an applicant does not provide the information set forth in (i) and (ii) above, and the insurer has clearly indicated the consequences of not providing that information, the insurer may issue the policy using the most reasonable estimate if it is able to reasonably estimate mileage or, if a reasonable estimate is not available, using a default annual mileage figure, which has been filed with and approved by the Commissioner. Upon receipt of the information set forth in (i) and (ii) above, the policy shall be rated using that information. If there is a significant inconsistency between the estimated miles and other reasonable objective information in the insurer's possession, the insurer may require the insured, within 30 days, to explain why the estimated miles are different from the annual miles derived from the objective information. The request for explanation must indicate that the failure to respond will result in the insurer using the figure from the reasonable objective information and shall state that figure. The insurer shall charge the estimated mileage figure provided by the insured until either an explanation is provided or for 60 days. If, after 60 days, an explanation is not provided to support the estimate, the insurer may use the reasonable objective information to estimate the annual miles, and charge the policyholder accordingly.

(vi) All mileage rating rules that direct the selection of a mileage rating relativity shall be filed with and approved by the Commissioner. This includes use of multiple mileage rating bands and use of default and/or average mileage rating relativities.

(vii) In no event shall an insurer modify the estimated mileage used to rate the coverage during the policy term unless acting upon a request from the insured or as a result of receiving new objective information which is significantly inconsistent with the current estimate. If there is a significant inconsistency between the estimated miles and newly obtained reasonable objective information in the insurer's possession, the insurer may again require the insured, within 30 days, to explain why the estimated miles are different from the annual miles derived from the objective information. The request for explanation must indicate that the failure to respond will result in the insurer using the figure from the reasonable objective

information and shall state that figure. The insurer shall charge the estimated mileage figure provided by the insured until either an explanation is provided or for 60 days. If, after 60 days, an explanation is not provided to support the estimate, the insurer may use the reasonable objective information to estimate the annual miles, and charge the policyholder accordingly.

(viii) In no event shall an insurer require an applicant to provide information from a prior insurer to confirm mileage estimated or driven.

(B) For renewal business:

(i) Prior to policy renewal, an insurer shall, at least every three years, require a policyholder to provide the miles he or she expects to drive the insured vehicle during the 12 month period following policy inception, and reasonable information necessary to support the estimate.

"Reasonable information" consists of the location of the applicant's workplace if the vehicle is used for commute purposes, the number of days per week the vehicle is used for commuting, an estimate of the number of miles to be driven for pleasure or other purposes, the approximate total number of miles driven the previous two years, the reason for any differences in the estimate for the upcoming year and the miles driven the previous year, and the approximate date of purchase of the vehicle. An insurer need not require all categories of information. Except as otherwise set forth in this section, an insurer shall use the policyholder's estimated annual mileage;

(ii) An insurer may require all policyholders to provide, at policy renewal, the current odometer reading of the vehicle to be insured or the insurer may obtain the odometer reading from the California Department of Motor Vehicles smog certification program;

(iii) If an insurer markets using an independent or captive agency system, and a policyholder meets with an agent in connection with policy renewal, the insurer may require the agent to verify the odometer reading of the vehicle to be insured under the policy, and the policyholder shall allow the agent to do so in order to renew the policy;

(iv) An insurer may request but shall not require service records which document the odometer reading at a particular date within the last three months;

(v) If a policyholder does not provide the information set forth in (i) and (ii) above and the insurer has clearly indicated the consequences of not providing that information, the insurer may renew the policy using the most reasonable estimate if it is able to reasonably estimate mileage or, if

a reasonable estimate is not available, using a default annual mileage figure, which has been filed with and approved by the Commissioner. Upon receipt of the information set forth in (i) and (ii) above, the policy shall be rated using that information. If there is a significant inconsistency between the estimated miles and other reasonable objective information in the insurer's possession, the insurer may require the insured, within 30 days, to explain why the estimated miles are different from the annual miles derived from the objective information. The request for explanation must indicate that the failure to respond will result in the insurer using the figure from the reasonable objective information and shall state that figure. The insurer shall charge the estimated mileage figure provided by the insured until either an explanation is provided or for 60 days. If, after 60 days, an explanation is not provided to support the estimate, the insurer may use the reasonable objective information to estimate the annual miles, and charge the policyholder accordingly.

(vi) All mileage rating rules that direct the selection of a mileage rating relativity shall be filed with and approved by the Commissioner. This includes use of multiple mileage rating bands and use of default and/or average mileage rating relativities.

(vii) In no event shall an insurer modify the estimated mileage used to rate the coverage during the policy term unless acting upon a request from the insured or as a result of receiving new objective information which is significantly inconsistent with the current estimate. If there is a significant inconsistency between the estimated miles and newly obtained reasonable objective information in the insurer's possession, the insurer may again require the insured, within 30 days, to explain why the estimated miles are different from the annual miles derived from the objective information. The request for explanation must indicate that the failure to respond will result in the insurer using the figure from the reasonable objective information and shall state that figure. The insurer shall charge the estimated mileage figure provided by the insured until either an explanation is provided or for 60 days. If, after 60 days, an explanation is not provided to support the estimate, the insurer may use the reasonable objective information to estimate the annual miles, and charge the policyholder accordingly.

(viii) In no event shall an insurer require a policyholder to provide information from a prior insurer to confirm mileage estimated or driven.

NOTE: Authority cited: Section 1861.02, Insurance Code; and *CalFarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805. Reference: Sections 1861.02, 1861.05, 11628 and 11628.3, Insurance Code.